

1           A     No.  I'm sorry.  No.

2           Q     Do you know Mr. Bernstein to be someone of a  
- 3   dubious character?

4           A     No.  No, he is not.

5           Q     He's not.  Okay.

6                   Do you think he could have given dubious  
7   testimony?

8           A     Do I think he could have?

9                   I don't -- I don't think so.  I don't think he  
10   would.

11          Q     If I could just for my final questions direct you  
12   to your direct testimony, page 3.

13          A     Okay.

- 14          Q     Line 17, 18 and 19.  In there you state that you  
15   are satisfied that the partnership management structure and  
16   its outside advisors have in the past and will in the future  
17   ensure truth and candor in dealings with the FCC.

18                   Do you believe that your partnership has acted in  
19   the past with truth and candor in dealing with the FCC?

20          A     That our current partnership structure has, yes.

21          Q     Your statement here says that your partner  
22   management structure --

23          A     Management structure.

- 24          Q     -- has in the past ensured truth and candor in  
25   dealing with the FCC.

1           Do you believe that your partnership has in the  
2 past ensured candor and truthfulness --

3           A     Yes.

4           Q     -- in dealing with the FCC?

5           And will the partnership continue in that same  
6 fashion?

7           A     Yes.

8           MR. QUIANZON: Thank you. That's all that I have.

9           JUDGE STEINBERG: I have a couple.

10          Page 3 of your testimony, lines 15 and 16, you  
11 refer to "the loss of the New Mexico license had a profound  
12 impact on me as a partner."

13          THE WITNESS: Yes.

14          JUDGE STEINBERG: Tell me what you mean by  
15 "profound impact".

16          THE WITNESS: I entered into this thing as an  
17 investment vehicle. Seeing how things can go **so** terribly  
18 wrong when you place your faith, perhaps naively, into  
19 others who have your trust --

20          JUDGE STEINBERG: Not to mention money.

21          THE WITNESS: Yes. That hit home that things can  
22 go -- things stemming out of one incident can lead to all of  
23 this has affected me. It brings the realization of what we  
24 are actually into, it brings it home.

25          I feel that because **of** it we are better for it,

1     that something like this will, dare I say never happen  
2     again, or we will do all that we can to see to it that this  
3     doesn't happen again. Having been punished like this,  
4     having been even, you know, put through all **of** this will  
5     lead almost anyone -- I can't speak for anyone but me, you  
6     know, I have got **a** whole new level of awareness.

7             JUDGE STEINBERG: When you talk about being  
8     punished, but Alee got a New Mexico license. Alee has been  
9     running the facility for 11 **or** 12 years, correct?

10            THE WITNESS: Yeah.

11            JUDGE STEINBERG: Alee has been -- I am not going  
12     , to say, I don't know what Alee's financial position is,  
13     whether they are making money or not, but you have been  
14     receiving distributions over the last few years; is that  
15     correct?

16            THE WITNESS: Absolutely.

17            JUDGE STEINBERG: A year and a half. Okay, I  
18     misspoke. For the past few years, I misspoke. And you  
19     know, how is that a punishment? That's the question. How  
20     do you consider that a punishment when you have been in  
21     business for 11 years, and been in a financial position to  
22     make distributions to the partners for the last six quarters  
23     or thereabout?

24            THE WITNESS: Okay, we have been in business, but  
25     under a cloud. We have been fighting this whole time to

1 keep our license. Because of this litigation, we are almost  
2 in limbo here. I can't honestly tell you where we will be  
3 in six months. We just might be out altogether.

4 JUDGE STEINBERG: Now I am talking about you  
5 personally. What are you personally doing now as a result  
6 of the Algreg proceeding that you didn't do before the  
7 decision in the Algreg proceeding came out? Do you follow  
8 the question?

9 Okay, there came a time when the Commission  
10 determined that Alee was not qualified to be a licensee.

11 THE WITNESS: Right.

12 JUDGE STEINBERG: For various reasons.

13 THE WITNESS: Um-hmm.

14 JUDGE STEINBERG: Are you doing anything now, you  
15 personally doing anything now differently than you did,  
16 differently with respect to this Alee, than you did before  
17 that decision came out with respect to your relationship to  
18 Alee?

19 THE WITNESS: No, because my -- the whole change  
20 in attitude came not so much from the decision, but from  
21 what brought us to that decision, the whole allegation and  
22 the whole realization of what had transpired from that  
23 event. That's what caused the change in my attitude.

- 24 JUDGE STEINBERG: Okay. Now since that change in  
25 your attitude occurred, what, if anything, have you been

1 doing differently in your relationship --

2 THE WITNESS: Me?

- 3 JUDGE STEINBERG: Yes, you personally are doing  
4 differently than your relationship with Alee since you came  
5 to that realization that you just spoke about?

6 THE WITNESS: I have taken -- I have taken a more,  
7 I don't know if I can even say active involvement. I have  
8 taken more of an interest and made more of an effort to be a  
9 part of the conference calls, to be a part **of** the meetings.

10 JUDGE STEINBERG: Now on page 4 of your testimony  
11 you say, "To my knowledge," this is the first line, "the  
12 partnership received no citations from the FCC for rule  
13 violations during the build-out."

- 14 But it's true that first Metro Mobil and then Bell  
15 Atlantic and now Altell are doing the day-to-day operations.

16 THE WITNESS: Yes.

17 JUDGE STEINBERG: And I guess Metro Mobile built  
18 the system? Somebody built the system.

19 THE WITNESS: Yes.

20 JUDGE STEINBERG: On behalf of Alee?

21 THE WITNESS: On our behalf, yes.

22 JUDGE STEINBERG: Okay. So you are, in essence,  
23 taking credit for something someone else did.

- 24 You might want to object it might be  
25 argumentative. You can object to my question.

1 MR. HILL: I have some restrain in --

2 JUDGE STEINBERG: No, no, you can. You can.

- 3 That's fair. I mean, I am not allowed to ask questions I'm  
4 not allowed to ask, and sometimes I sustain those  
5 objections. Okay, point's made. So I will withdraw the  
6 question since I made it in my own mind.

7 JUDGE STEINBERG: Okay, any redirect?

8 MR. HILL: No redirect.

9 JUDGE STEINBERG: Any cross **on** just limited to my  
10 questions? I mean, just limited to the questions that **I**  
11 asked. We're not going beyond the scope of those questions.  
12 Do you want to take a couple of minutes and think about it?

- 13 MS. LANCASTER: Is he allowed to ask questions  
14 based on Mr. Quianzon's?

15 MR. HILL: I would object to that.

16 JUDGE STEINBERG: Now if you want to do that, then  
17 you have to call -- you know, you can feed the Ranger/Miller  
18 notes or something

19 You might want to have them examine first on one  
20 of these so you could play mop-up.

21 Okay, well, anything based on my questions? Okay,  
22 we will have to hear from the Bureau first. Is that Mr. De  
23 Jesus? Was that no questions?

- 24 MR. DE JESUS: No questions, Your Honor.

25 JUDGE STEINBERG: Okay. Now Mr. Quianzon.

1 MR. QUIANZON: I just have one question.

2 RE-CROSS-EXAMINATION

- 3 BY MR. QUIANZON:

4 Q Are you able to -- the judge was able to point out  
5 in your statement that the loss of the New Mexico license  
6 has had a profound impact. Are you able to quantify that in  
7 dollar, in a dollar way in any fashion at all?

8 In other words, are you able to assign a dollar  
9 amount to that profound impact?

10 A No.

11 Q In your mind do you believe that you have  
12 significantly less dollar value because of the **loss** of that  
13 license?

14 A Yes.

15 MR. QUIANZON: Okay, thank you.

16 THE WITNESS: Thank you.

17 MR. HILL: Nothing else.

18 JUDGE STEINBERG: Okay. You are excused now, Mr.  
19 Di Costanzo. Thank you very much --

20 THE WITNESS: Thank you very much.

21 JUDGE STEINBERG: -- for testifying, and I suggest  
22 you fill up here and don't stop on the way down to Virginia  
23 Beach.

- 24 THE WITNESS: Thank you very much.

25 JUDGE STEINBERG: It's not a joking matter.

1 (Witness excused.)

2 MR. HILL: With a five-minute break, I will --

3 JUDGE STEINBERG: Yes, let's come back at 10 till.

4 MR. HILL: Okay.

5 JUDGE STEINBERG: We will go off the record now.

6 (Whereupon, a short recess was taken.)

7 JUDGE STEINBERG: Back on the record.

8 Mr. Jones, could you please rise and raise your  
9 right hand, please?

10 Whereupon,

11 TERRY JONES

12 having been duly sworn, was called as a witness  
13 and was examined and testified as follows:

14 JUDGE STEINBERG: Okay, please be seated.

15 MR. HILL: Your Honor, I would like to have marked  
16 as Alee Exhibit 1 the written direct testimony of Terry H.  
17 Jones consisting of 10 pages, plus Exhibit A. It's a total  
18 of 13 pages.

19 JUDGE STEINBERG: Okay, we're taking out the  
20 declaration.

21 MR. HILL: That's correct.

22 JUDGE STEINBERG: Okay. The document described  
23 will be marked for identification as Alee Exhibit 1.

24 (The document referred to was  
25 marked for identification as



1 Alee Exhibit No. 1.)

2 DIRECT EXAMINATION

3 BY MR. HILL:

4 Q Mr. Jones, do you have in front of you what has  
5 been identified as Alee Exhibit 1?

6 A Yes, sir.

7 Q Was that prepared under your supervision?

8 A Yes, sir, it was.

9 Q Are there any corrections to the Exhibit 1 that  
10 you would like to make?

11 A Yes. On page 8, line 1.

12 Q What is the change you would like to make?

13 A It makes reference to "as a result of the Sharifan  
14 foreign partner matter." It was really the risk-sharing  
15 issue and the Allan Kane control issues.

16 JUDGE STEINBERG: So that should be changed to "In  
17 late 1989, largely as a result of the Sharifan..."?

18 THE WITNESS: Delete "Sharifan."

19 JUDGE STEINBERG: Oh, delete "Sharifan"?

20 THE WITNESS: Delete "Sharifan foreign partner  
21 matter," and insert "risk-sharing and Allan Kane control  
22 issues."

23 BY MR. HILL:

24 Q With that change, is Exhibit 1 true and correct to  
25 the best of your knowledge?

1 A Yes, sir, it **is**.

2 MR. HILL: Your Honor, I move the introduction of  
- 3 Alee Exhibit 1.

4 JUDGE STEINBERG: Any objection?

5 MR. DE JESUS: If I may, Your Honor.

6 JUDGE STEINBERG: Let me just say before I forget,  
7 would you during a break or something, you or Ms. Rasmussen,  
8 make the correction --

9 MR. HILL: Yes.

10 JUDGE STEINBERG: -- in the --

11 MR. HILL: Court reporter's copy?

12 JUDGE STEINBERG: Yes, please. Thank you.

13 VOIR DIRE EXAMINATION

14 BY MR. DE JESUS:

15 Q Hello, Mr. Jones. As you know, my name is  
16 Gilberto De Jesus. I had occasion to depose you --

17 A Yes, sir.

18 Q -- on July 9, 2002. I have a few questions  
19 specifically regarding --

20 MS. LANCASTER: Excuse me one second.

21 (Pause)

22 MR. DE JESUS: Your Honor, if I may ask voir dire?

23 JUDGE STEINBERG: I thought that's what this was.

- 24 BY MR. DE JESUS:

25 Q You have just indicated that you are changing page

1 8 from "In late 1989, largely as a result of  
2 Sharifan's/foreign partnership matter," you want to  
- 3 substitute the word "risk-sharing and Allan Kane."

4 Can you --

5 A Allan Kane control.

6 Q Okay. Allan Kane control.

7 JUDGE STEINBERG: Control issues.

8 THE WITNESS: Issues.

9 MR. DE JESUS: Okay.

10 THE WITNESS: Okay.

11 BY MR. DE JESUS:

12 Q Can you tell us why you are changing that?

13 A Yes. After careful review of the transaction and  
14 reviewing additional documents that I had in preparation for  
15 my testimony today, I was, or I became aware that this issue  
16 was not -- the Sharifan foreign partner matter issue was not  
17 made, to my knowledge, until approximately April of 1990,  
18 March or April of 1990, when I wrote the check, the refund  
19 check to Mr. Sharifan.

20 MR. DE JESUS: Your Honor, we have no further  
21 objection with reference to the statement that was provided.

22 JUDGE STEINBERG: Mr. Evans?

23 MR. EVANS: Yes, I do have some objections.

- 24 First of all, the list of partners and their  
25 interests on page 2 and 3 is different from -- the ownership

1 interests that are referenced there are different from  
2 what's in the current application that's on file with the  
- 3 Commission. And traditionally, going back to our hearing  
4 days, you could not put forth at hearing a statement of  
5 ownership in your applicant that varied from what's in your  
6 application, the objection is variance.

7 JUDGE STEINBERG: Well, that was for comparative  
8 purposes, and kind of upgrading. You couldn't increase or  
9 decrease somebody. They were stuck with the interest they  
10 had the B cutoff date. But that's not the type of thing we  
11 have here. This is just -- we are not saying that this Alee  
12 is entitled to a comparative advantage over some other  
13 applicant because so and so has 25 percent rather than 20  
14 percent he held on the B cutoff date. So I don't --

15 MR. EVANS: Objection, there is --

16 JUDGE STEINBERG: If it's a variance, I mean, are  
17 there any amendments to the application that contain the, I  
18 guess, the current ownership numbers?

19 MR. EVANS: No. The most recent --

20 JUDGE STEINBERG: Well, then maybe introduce the  
21 application, introduce however many amendments they had, and  
22 you show that they have been violating the rule. I mean,  
23 Mr. Jones is representing that these are the interest that  
- 24 these people have today in Alee. And it might be, it might  
25 not be. But if, you know, they have an obligation, I guess

1 cellular people have 1.65 obligation too?

2 MR. EVANS: Yes. Yes.

- 3 JUDGE STEINBERG: And they have to report within  
4 30 days. And you know, you might want to make that argument  
5 if it's based upon record evidence. Or you might want to  
6 work out a stipulation as to what the percentages are. But  
7 you probably don't want to stipulate to that.

8 MR. EVANS: Well, the other issue is whether in  
9 fact Mr. Sharifan is or is not in the partnership because  
10 the application shows that there was an amendment that was  
11 proffered to the Commission with a waiver request for  
12 acceptance of him being taken out of the partnership. So  
13 far as I know that waiver was never acted upon.

14 JUDGE STEINBERG: Don't ask me.

15 MR. HILL: But there is no foreign ownership  
16 issue. If someone wanted to raise that, there is a proper  
17 procedure at a proper time.

18 JUDGE STEINBERG: I mean --

19 MR. EVANS: Just as long as we can go ahead.

20 JUDGE STEINBERG: You can argue whatever you want  
21 to argue, and I mean, it would seem to me that if -- I mean,  
22 I read somewhere in the Bureau's exhibits where there was  
23 incorporation by reference of -- yes, when Mr. Sharifan was  
24 taken out, the argument was he was not a member of the  
25 partnership on the day the application was filed, and we

1 make reference, and there was a reference in there to an  
2 amendment that you filed. An amendment in Texas 21 making  
- 3 reference to an amendment in --

4 MR. HILL: New Mexico.

5 JUDGE STEINBERG: -- New Mexico 3, and you know,  
6 how can they be blamed if the Commission hasn't acted on a  
7 waiver request in four years? I mean, I am saying in my own  
8 mind if the Commission never acts on something, what are  
9 they supposed to do?

10 MR. EVANS: I don't know. I'm just --

11 JUDGE STEINBERG: Yes. I mean, you might want to  
12 tell me what they are supposed to do, and Alee might tell me  
13 something different. But I mean, it seems, you know, the  
14 matter was reported -- I am talking about Sharifan. The  
15 Sharifan removal was reported, but the legal ownership is,  
16 as far as the Commission goes today, I don't know.

17 MR. EVANS: Well, there was also another --  
18 actually there were a couple of --

19 JUDGE STEINBERG: I'm being very candid.

20 MR. EVANS: There were a couple of changes that  
21 were made that were substantive that are referenced in that  
22 same amendment that you are talking about that was proffered  
23 to the Commission with a rate request. The Commission  
24 didn't act upon it, and there are some issues there that  
25 have continuing relevance here.

1 JUDGE STEINBERG: Well, we can either argue about  
2 them here or argue about them in findings, because I know  
- 3 one of the elements of rehabilitation is violations since  
4 the loss -- any further violations since the loss of  
5 license, and so there would be a handle for the arguments.  
6 I mean, I'm thinking out loud, and I'm not bound by my  
7 thinking out loud. How can Alee be blamed if the Commission  
8 hasn't acted on a request of theirs for three - four years?

9 MR. HILL: Ten years, 1992 is when we --

10 JUDGE STEINBERG: I thought the Texas 21  
11 application, wasn't there a '98 filing?

12 MR. HILL: 1988 filing.

13 JUDGE STEINBERG: Okay.

- 14 MR. HILL: It was filed --

15 JUDGE STEINBERG: Because I had some question when  
16 we get to that exhibit, dates didn't seem to make sense to  
17 me, and it seemed like how could this possible be filed so  
18 late. Okay, but that's 10 years. Maybe you want to have  
19 Howard Lieberman do a writ of mandamus, petition for a  
20 mandamus to get the Commission to act on a silly amendment.

21 I mean, I am -- okay, I have said enough.

22 MR. EVANS: I guess what I am saying is maybe we  
23 can proceed with what they have told us here as long as the  
- 24 issue of whether Mr. Sharifan is in or out is left up in the  
25 air. We can still argue about that.

1 JUDGE STEINBERG: Well, they said he's out because  
2 he was removed from ownership before the application was  
3 filed. We reported it, and that it was a mistake to include  
4 it in the original application, and we reported it as soon  
5 as we discovered the mistake, and we asked for a waiver, and  
6 the Commission is sitting on it for 10 years. I am not  
7 going to sit here and re-litigation Algereg in the context of  
8 Texas 21.

9 MR. EVANS: No, I didn't intend to **do** that, but it  
10 seemed to me we need to know who is or is not in the  
11 partnership as of this time. For purposes of the Commission  
12 it should know that itself.

13 JUDGE STEINBERG: Well, this is a representation  
14 by Mr. Jones as to who is in the partnership as of the  
15 current time, and you are certainly free to ask him  
16 questions about it. I mean, I'm just --

17 MR. EVANS: I guess, my main objection was it was  
18 variance.

19 JUDGE STEINBERG: Yes.

20 MR. EVANS: And I think what you said about the  
21 comparative case.

22 JUDGE STEINBERG: Yes, we're not worried about  
23 variance here. But if, for instance, it is shown that  
24 Vincent Di Costanzo received another, you know, .2 percent  
25 interest within the last let's say six months, and it's



1 never been reported, you might say, okay, there is a 1.65  
2 violation, and they have violated a Commission rule since  
- 3 the time of their disqualification, and that impacts on  
4 rehabilitation because they are coming in and saying, you  
5 know, we have been clean since then, and this is the only  
6 black mark on our record. And you can argue, no, it isn't.  
7 You have had 1.65 obligation you haven't been fulfilling. I  
8 mean, take a hypothetical based upon your objection.

9 MR. EVANS: All right. Mr. De Jesus?

10 No, let me see if Mr. Evans is finished with his  
11 objection.

12 MR. EVANS: I am finished with that objection, but  
13 I have others.

- 14 JUDGE STEINBERG: Okay, do you want to address  
15 that?

16 MR. EVANS: Yes. I guess, I have a -- I would  
17 like to outside of the witness' presence discuss some issues  
18 that I think are relatively important, and it would --  
19 obviously defense counsel would be here, but I think there  
20 are just some issues that need to be raised.

21 JUDGE STEINBERG: That's okay. Mr. Hill.

22 Do you have any objection?

23 MR. HILL: No objection

- 24 JUDGE STEINBERG: Why don't you go back into the  
25 witness room?

1 THE WITNESS: Sure, be happy to.

2 (witness temporarily excused from witness stand.)

- 3 MR. HILL: We will come back and get you.

4 MS. LANCASTER: Just off the record -- are we off  
5 the record?

6 JUDGE STEINBERG: No.

7 MR. DE JESUS: Your Honor, based on the course of  
8 testimony that I believe unfolded during the course of  
9 questioning of the witness, we were prepared to establish a  
10 chronology of the dates and events. For example, the  
11 application was filed on August 12, 1988. The transfer of  
12 control from Mr. Sharifan to Mr. Sharif occurred on  
13 September 23, 1988. Alee gets a license on August 1989.

14 The executive committee takes over on January  
15 1990, and finally, on April 30, 1990, Alee discloses to the  
16 Commission that there has been alien ownership, and that the  
17 issues that occurred regarding that.

18 MR. HILL: To make sure we understand, you are  
19 talking about the New Mexico application?

20 MR. DE JESUS: Correct.

21 MR. HILL: Okay, not the Texas 21.

22 MR. DE JESUS: Right. Right. And what it does is  
23 it creates -- when Mr. Jones came in and shifted the -- "In  
24 late 1989, largely as a result of Sharifan's/foreign  
25 partnership matters," the partnership, and when he

1 substitutes the word "risk-sharing and Allan Kane," I think  
2 it's "control"?

- 3 JUDGE STEINBERG: "...risk-sharing and Allan Kane  
4 control issues."

5 MR. DE JESUS: Right, issues.

6 I think that changes the dynamics of what it was  
7 we were hoping to show. What we wanted to demonstrate in  
8 part was that Mr. Jones sat on that information until well  
9 after they got the license.

10 JUDGE STEINBERG: In New Mexico 3?

11 MR. DE JESUS: New Mexico 3.

12 JUDGE STEINBERG: I don't care about New Mexico 3.  
13 That is dead. That's what Algleg was about, and we are not  
- 14 reopening New Mexico 3. I wouldn't let -- you want to  
15 cross-examine him intensely on his change, go ahead.'

16 MR. DE JESUS: No, it goes to an issue of candor  
17 as to when this information was disclosed to us.

18 JUDGE STEINBERG: Well, he has already -- they  
19 have already suffered the -- not suffered. I mean, they  
20 have been disqualified on the basis of candor in New Mexico  
21 3. Mr. Hill is not saying they didn't do anything bad in  
22 New Mexico 3.

23 Now perhaps the witnesses this morning didn't  
- 24 think they did anything back in New Mexico 3, but the fact  
25 is the Commission said that they did something bad in New

1 Mexico 3, and that they are not qualified to be Commission  
2 licensees, and they have come in here and they have said we  
3 are rehabilitated, and the Commission said, designating this  
4 case for hearing, okay, prove it. And so what they are  
5 doing is they are trying to prove it.

6 And what happened in New Mexico 3 in terms of when  
7 the application was filed, New Mexico 3 was filed, when the  
8 Sharifan transfer took place in New Mexico 3, when they  
9 found out this and when this, that's irrelevant in terms of  
10 what the facts are. Mr. Hill would probably stipulate to  
11 whatever facts the Commission -- whatever facts the  
12 Commission found in the Algereg proceeding were  
13 disqualifying.

14 I mean, I don't see that we have to prove that  
15 here. It's already been proven.

16 MR. DE JESUS: Well, if I may, Your Honor. Part  
17 of rehabilitation goes to accepting responsibility and  
18 clearly --

19 JUDGE STEINBERG: Well, fine, it's accepting  
20 responsibility, and I think that you can certainly ask  
21 questions about accepting responsibility. I mean, I asked  
22 these witnesses, and somebody asked these witnesses this  
23 morning whether they -- at least the last witness I asked  
24 whether you can sit here today and tell me that you think  
25 you did anything wrong, and Alee did anything wrong in New

1 Mexico 3. And he said no.

2 Okay, and you can argue this is accepting  
- 3 responsibility? And you can argue he has accepted  
4 responsibility because in his direct statement he says, "I  
5 accept responsibility." What's that mean? If you are a  
6 cabinet member, it means nothing because you never resign.  
7 But I accept responsibility, and then everybody goes on and  
8 does what they did before.

9 But I don't see that you need to drag out -- we  
10 have to get into the facts of New Mexico 3 for this  
11 particular case.

12 Anybody else want to be heard on that?

13 MR. EVANS: I agree with you.

- 14 MR. HILL: Well, I certainly agree that we do not  
15 need to, and indeed we are directed not to re-litigate New  
16 Mexico 3, and I think the hearing order said Alee is bound  
17 by the findings in Algereg.

18 JUDGE STEINBERG: Yes. And I mean, I realize that  
19 in the direct cases there is some summary of Alee's position  
20 in New Mexico 3, and I am viewing that not as fact but as  
21 Alee's position as to their statement of the background.

22 Now, to the extent that you might argue that, you  
23 know, by putting in their direct -- well, I am not going to  
- 24 say what you can argue. You can argue it if you think of it  
25 yourself. You know, I'll give you credit, I will give you

1 the benefit of thinking.

2 But in terms of the facts in the direct cases as  
- 3 related to New Mexico 3, I view it as background, not as  
4 rearguing what they said before, but just as background as  
5 to how we got here. And if Mr. Hill tries to use it in a  
6 positive manner, then I think you can be clever enough to  
7 use it and turn it around on him.

8 Anything further? So, okay, the Bureau didn't  
9 have any objection to Alee 1 other than -- and you can cross  
10 on the change. I mean, he changes his testimony, he is  
11 entitled to change his testimony, and you can say it's, you  
12 know, frogs fly.

13 MR. HILL: And in voir dire, he explained it.

14 JUDGE STEINBERG: Yes, and he can say frogs fly,  
15 and you cross-examine him.

16 MS. LANCASTER: Do you want me to go get the  
17 witness, Your Honor?

18 JUDGE STEINBERG: Yes. And did Mr. Evans have any  
19 objection to No. 1?

20 MR. EVANS: Yes, I had further objections.

21 JUDGE STEINBERG: Oh, okay. You are just on your  
22 first one. Okay.

23 MR. EVANS: Right, right.

24 But I think I know how you are going to rule on  
25 these anyway. These are objections that are consistent with

1     what we raised with the witnesses this morning, but I just  
2     want to make them for the record.

3                 On page 7 of Mr. Jones' testimony, starting with  
4     the beginning of line 9, the sentence beginning, "However,  
5     the Alee partners did not know each other," et cetera, down  
6     to the bottom of the page.

7                 JUDGE STEINBERG: Yes, I have a note to myself  
8     with respect to that whole paragraph, you know, starting  
9     with line 3, going up to line 2 of page 8. That's  
10    borderline, not within the scope of the issues. Of course,  
11    that's all rehash of the earlier proceeding.

12                MR. EVANS: Well, especially insofar at the end  
13    there where they say that partners were misled, misinformed  
14    and manipulated. And to me, that seemed to be them really  
15    trying to re-litigate the Algreg case.

16                JUDGE STEINBERG: Well, that's not going to find  
17    itself in the findings unless -- I mean, but I can see how  
18    you can turn it against them because they didn't think they  
19    did anything wrong, and they still don't think they have  
20    done anything wrong. So you can turn it against them.

21                MR. EVANS: Okay. All right, well, that's one  
22    objection. And I understand you are --

23                JUDGE STEINBERG: I mean, I look at it right now  
24    as sort of borderline, borderline beyond the scope of the  
25    issue, and, you know, how they think they got to this

1 position today. Whether it's used in findings and  
2 conclusions, I have no idea, or in a decision. But I had  
- the same note you do

4 MR. EVANS: Okay, then on page 8, line 7, I object  
5 to the phrase which begins, "which ultimately led to the  
6 Algreg proceeding and the revocation of our New Mexico 3  
7 license."

8 It's really two objections on that. One is, it's  
9 re-litigating the Algreg case; but secondly, it's a legal  
10 conclusion really by the witness who is not a lawyer as to  
11 what the basis was for the revocation of New Mexico 3.

12 JUDGE STEINBERG: Well, okay. Well, if this is  
13 what his state of mind is, regardless of whether he's a  
14 lawyer or not, but I'm not -- you know, that's also  
15 borderline beyond the scope, but I will give Alee the  
16 benefit of the doubt. But I'm not going to, certainly not  
17 making finding. I might say in his own mind this is what he  
18 thinks. But you know, stuff like this isn't going to turn  
19 the tide.

20 MR. EVANS: All right. And then --

21 JUDGE STEINBERG: So I guess that's overruled.

22 MR. EVANS: And then on that same page 8 beginning  
23 at the beginning of line 17.

24 JUDGE STEINBERG: Right.

25 MR. EVANS: Where they say, "The Alee partners



1 have always tried to be candid and truthful." And to me  
2 that seems to be directly contrary to what the Commission  
3 already found, and that objection goes from line 17 to over  
4 that paragraph.

5 JUDGE STEINBERG: Yes. Okay, I'll overrule that  
6 too for the same reasons because this is consistent with my  
7 other rulings. But I am not going to give -- I am certainly  
8 not going to make a finding inconsistent with what the  
9 Commission found in Algereg.

10 MR. EVANS: All right. And then my final  
11 objection is the last sentence in the exhibit on page 10,  
12 and the objection there is that it's inclusory. "Alee can  
13 be trusted to build out the Texas 21 system and operate it  
14 in the public interest of the application we have had."

15 It's not a fact, it's just a conclusion.

16 JUDGE STEINBERG: Well, it's an opinion. His  
17 opinion is we have rehabilitated, you can trust us. I'll  
18 overrule that. I don't see that a decision is going to be  
19 based on that sentence either.

20 MR. EVANS: No further objections.

21 JUDGE STEINBERG: Okay, Alee Exhibit 1 is  
22 received.

23 (The document referred to,  
24 previously identified as Alee  
25 Exhibit No. 1, was received in